



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-L-H-

DATE: SEPT. 22, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and argues that he is eligible for a national interest waiver due to his "professional experiences as a highly qualified high school English teacher." In June 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, he provides further evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. See *Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to continue his work as a high school English and language arts teacher. He was previously employed by the [REDACTED] in [REDACTED] Arizona from February 2013 until September 2015. Since February 2016, the Petitioner has worked as an English teacher at the [REDACTED] in [REDACTED] Arizona, and his response to our RFE reflects that he intends to continue teaching English at [REDACTED]

The Petitioner contends that his training allows him "to facilitate English language arts skills and improve students' academic performance. Specifically, English language learners and at-risk students at [REDACTED] will benefit from my teaching in reading and writing." He further states that his work will "maximize students' proficiency scores in English." In addition, [REDACTED] lead teacher at [REDACTED] indicates that the Petitioner's "dedication to developing his students' skills is among his highest qualities. Most of the students in our school are English Language Learners (ELL) and struggle with basic syntax and grammatical skills in English." We find that the Petitioner's proposed work teaching English in a charter high school classroom has substantial merit as it provides valuable educational benefits to his students.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of his work. Specifically, we requested documentation demonstrating that his proposed work has broader implications for his field, as opposed to being limited to the students at the school where he intends to teach. In response, the Petitioner maintains that his work teaching ELL students at [REDACTED] offers benefits in the field of education. He explains that his "students are primarily English Language Learners and they need intervention strategies and someone with invaluable experience to facilitate their success in English."

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a master of arts in teaching degree from [REDACTED] in November 2012.

With my proposed literacy intervention plan and classroom management experience, I will be able to ameliorate this relevant problem."

In addition, [REDACTED] Superintendent of [REDACTED] a charter school district with learning centers in several high poverty areas in Arizona (including [REDACTED]) notes that "[f]inding any English teacher whatsoever in a struggling border town like [REDACTED] is daunting task," and that few are "as capable and effective" as the Petitioner. [REDACTED] further states that "every dollar [REDACTED] pays to a highly effective teacher, like [the Petitioner], returns to the American taxpayer something on the order of \$20," which represents a "very significant benefit to the United States." He also offers an information sheet about alternative education for high-risk students and its impact in Arizona.

The Petitioner's evidence, however, is not sufficient to demonstrate that his proposed endeavor is of national importance. While we acknowledge the merits of the Petitioner's work to improve the English language proficiency of his students at [REDACTED] the evidence does not demonstrate that his instructional activities offer benefits that extend beyond his school or district to impact the fields of ELL or alternative education more broadly.⁴ As the Petitioner has not established that his specific endeavor's prospective impact supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted academic records, letters confirming his employment history, evidence of his credentials and certifications as a teacher, and various local awards and certificates, including numerous certificates of participation, completion, and attendance for training courses and seminars relating to his professional development. He also provided his teacher performance evaluations and letters of recommendation from colleagues, supervisors, and his pastor, attesting to his teaching expertise and positive impact on student performance.

The references discuss the Petitioner's talent, dedication, and contributions to his schools. For example, [REDACTED] states that the Petitioner teaches "Spanish speaking students whose proficiency in English is quite limited" and that his "ability to effectively manage his students and effectively address their learning needs" distinguishes him as an instructor. In addition, [REDACTED] indicates that the Petitioner's "9th and 10th grade English Language Arts classes consistently exceeded their anticipated academic growth targets." Furthermore, [REDACTED] Senior Pastor at [REDACTED] asserts that the Petitioner "loves to teach and that he has made a lasting impact in the lives of the students he teaches in the public sector as he has for the church."

The record demonstrates the Petitioner's qualifications as an experienced teacher, his ability to serve at risk students and maximize their English proficiency, and his educational skills and professional

⁴ In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

knowledge as an English instructor. In addition to letters of support discussing the Petitioner's progress in the classroom, the record contains his favorable teacher performance evaluations, and awards and certificates reflecting that he and his students have garnered local recognition for their academic accomplishments. Accordingly, the Petitioner has provided evidence that he is well positioned to advance his proposed endeavor of increasing his students' English language proficiency, and we find therefore that he satisfies the second prong of the *Dhanasar* framework.⁵

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his teaching qualifications, favorable recommendations, and the impracticality of labor certification. However, as the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of K-L-H-*, ID# 478723 (AAO Sept. 22, 2017)

⁵ While we find that the Petitioner is well positioned to support ELL students at [REDACTED] the evidence is not sufficient to demonstrate that his past work has affected the education field beyond the schools where he has taught, or that he has otherwise been integral to advancing novel English language learning techniques that have garnered significant interest in his field or the charter school industry. Therefore, had the Petitioner met the first prong by demonstrating that his proposed endeavor has broader implications in the field (such as by influencing ELL education practices beyond his school districts), the record does not show that his background and progress in this broader endeavor renders him well positioned to advance it.